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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,267	08/10/2001	Christopher D. Creech	018512-006510US	6230

20350 7590 05/11/2004

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EXAMINER

LI, RUIXIANG

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/927,267

Applicant(s)

CREECH ETAL.

Examiner

Ruixiang Li

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 19 March 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3,8,19 and 20.

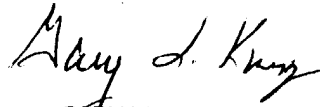
Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): (i) the rejection of claims 1, 3, 7, 19, and 20 under 35 U.S.C., 1st paragraph for written description; (ii) the rejection of claims 1, 3, 7, 8, 19, and 20 under 35 U.S.C. 102 (e) as being anticipated by Raumann et al. (WO 02/02633 A2) or by Vernet et al. (WO 01/81578 A2).

Continuation of 5. does NOT place the application in condition for allowance because: the rejections of claims 1, 3, 8, 19, and 20 under 35 U.S.C.101 and under 35 U.S.C. 112, 1st paragraph for enablement due to lack of utility are maintained.

Applicants submitted Dr Lin's Declaration under 37 C.F.R. 1.132 and continue to argue that the nucleic acid of the present invention is the ortholog of rat OCNC2 gene because the human CNG2B polypeptide is highly expressed in the brain and its amino acid sequence is more than 93% identical to that of rat OCNC2. Applicants further argue that one skilled in the art would believe that human CNG2B and rat OCNC2 polypeptide have the same physiological function in mediating olfactory transduction. This has been fully considered, but is not deemed to be persuasive because the instant specification does not disclose a specific and substantial utility in its currently available form for the reasons set forth at pages 3-5 of the final rejection.


GARY KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600